In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 613

THE UNITED STATES, *Petitioner*

v.

GEO. S. BUSH & CO., INC., *Respondent*

On petition for writ of certiorari to the United States Court of Customs and Patent Appeals.

Brief for Respondent in Opposition

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OPINIONS BELOW

This action originated by a trial in the United States Customs Court before a single judge, whose opinion (R. 51-60) is reported as Reap. Dec. 4034, 71 Treas. Dec. 1291. Thereafter a review was granted by a division consisting of three judges of said court, whose opinion (R. 63-75) is reported as Reap. Dec. 4253, 73 Treas. Dec. 1432. An appeal involving only questions of law was taken to the

United States Court of Customs and Patent Appeals, and that court's opinions (R. 77-92) are reported as CAD 64, 27 CCPA....., 104 F (2d) 368.

JURISDICTION

The petition is authorized by section 195 of the Judicial Code, as amended (28 USC 308), granting to this court the power to review, by certiorari or otherwise, final judgments of the Court of Customs and Patent Appeals.

QUESTIONS PRESENTED

The court below held that a proclamation by the President changing the basis of assessment of duty on imported canned clams was invalid because based upon an illegal investigation made by the United States Tariff Commission (R. 86). Therefore respondent cannot accede to the government's statement (p. 2) that the first question presented is whether:

> The Customs Court has power to review the facts upon which the Tariff Commission based its recommendations to the President, and if dissatisfied to declare the proclamation void.

As will be shown below, the court did not "review the facts" and declare the proclamation void because dissatisfied therewith, but simply determineed that a legal investigation had not been made, and that this was a condition precedent to the issuance of a valid proclamation.

The second question stated by petitioner (p. 2) is whether the Tariff Commission erred in its method of ascertaining the foreign cost of production of canned clams. As to this respondent contended, and the court

below held (R. 82, last par.), that "the Commission did not find the weighted average of the invoice prices or values *for a representative* period," and (R. 83) that "The formula used by the Commission was not that provided by the Congress, * * *" Also, the court pointed out (R. 82, 2nd par.) that Congress provided by section 336 (e) (2) (A), that the Commission might accept as evidence of the cost of production the "weighted average of the invoice prices or values for a representative period."

STATUTES INVOLVED

The relevant statutes are sections 336, 402 (d), 402 (g), and 522 (b), tariff act of 1930, c. 497, 46 Stat. 696, 708, 739, 19 USC 1336, 1402, 31 USC 372, as set forth in the appendix, infra, pp. i-vi.

STATEMENT

So far as it is material for present purposes, petitioner's statement of facts is accurate, except for the following reference to respondent's position and contentions (p. 5):

> It was admitted that the Commission had proceeded properly in ascertaining the foreign and domestic costs and that the period selected as representative for determining the weighted average of invoice prices was proper. The validity of the proclamation was challenged solely on the ground that the Commission had no legal authority to use one period to ascertain the weighted average of invoice prices in Japanese yen and another period to ascertain the rate of exchange for converting the yen into United States dollars.

The statement that respondent admitted that the Commission "proceeded properly in ascertaining foreign . . . costs" is true only if the ascertainment relates solely to costs *as expressed in foreign money*. This was not contested. Therefore a more correct statement of respondent's position is that the Commission's ascertainment, by use of the weighted average of invoice prices or values, of foreign cost of production, as expressed in *foreign* money, was not challenged, and no claim was made that the period selected was not representative. At all times, however, respondent contended that the Commission had not ascertained foreign cost of production, in that the Commission's finding, as expressed in United States currency, was not the cost of production referred to in the statute.

In the court below, and in the present petition, the government asserted that a finding by the Commission of a foreign cost of production, expressed in foreign currency, is a compliance with the terms of section 336 (e) (2) (A), and that thereafter the Commission might convert this cost into United States currency by use of a rate of exchange other than the rates in effect during the representative period. These opposite contentions constituted the main issue below, and it was upon this point that the court held that the Commission's investigation was illegal.

As quoted above, petitioner also states that the validity of the proclamation was challenged solely on one ground. However, the decision below states (R. 81) that "the validity of the presidential proclamation is also challenged by counsel for appellant for other reasons," which the court found unnecessary to be set forth. Also, as mentioned by the opinion, appellant contended (R. 81) that:

> If the procedure followed by the Commission and the President is not in violation of the terms of sec-

tion 336, then the statute is an unconstitutional delegation of legislative power in that it grants to the agent discretion as to what the law shall be.

The court below agreed with this contention in principle (R. 84), but in view of its decision did not specifically pass upon this point.

ERRORS SPECIFIED

1) Under this heading (p. 6) petitioner states that the court below erred in failing to hold that the Customs Court had no power to review the facts or the reasoning upon which the Tariff Commission based its recommendation to the President.

This is answered by pointing out that the court did not review the "facts or the reasoning," but merely passed upon three points, namely:

a) Whether a legal investigation by the Commission was a condition precedent to issuance of a lawful proclamation.

b) Whether ascertainment, in terms of United States currency, of foreign cost of production for the period selected as representative was a necessary part of its investigation.

c) Whether the Commission did in fact ascertain such cost of production.

In addition to its opinion in the instant case, the court's recent decision in *Moss v. United States*, 26 CCPA (Customs) 381, 103 F (2d) 395, shows that it has not asserted power to review the Commission's actions in the manner stated by petitioner. There it was said by Judge Parker

of the fourth circuit, specially assigned, Judge Lenroot concurring (p. 384-5):

> It is clear, therefore, that an investigation must be conducted and a hearing had by the Commission as a basis for action under the act; and, if such evidence is not taken, action is not authorized. St. Joseph Stockyards Co. v. United States, 298 U. S. 381, 51.
>
> . . .
>
> *This does not mean that the court may review the facts or substitute its judgment for that of the Commission.* It means merely that, where the question is properly raised, it must determine whether the Commission acted within the scope of the authority granted it by Congress, and that in determining this question it must consider whether the Commission had before it any substantial evidence upon which to base its action.

In the present case the majority opinion was written by Judge Hatfield, and a reference to his concurring opinion in the *Moss* case, *supra*, again illustrates that the court does not consider it has power in cases such as this to review the facts and reasoning upon which the Commission bases its recommendation to the President. In Judge Hatfield's opinion (p. 392) the court does not have jurisdiction "to review the evidence before the President for the purpose of determining whether there was any substantial evidence to warrant the raising or lowering of rates of duty," but at the same time he states (p. 392), in what is pertinent to the present question, that the court has power "to require the Tariff Commission and the President to conform their actions to the mode prescribed by Congress."

Thus it seems clear that here the court merely inquired as to whether the Commission had followed the procedure outlined by Congress for determining foreign cost of production for a representative period, and, when it ap-

peared that this had not been done, held that the proclamation was void for want of a legal investigation.

2) Petitioner's second specification of error (p. 6) is in effect that the court erred in holding that section 336 (e) (2) (A) prohibited ascertainment of cost of production in the manner here used. The method employed by the Commission was concisely described by the court (R. 82-3). If this method were valid, then we would have the strange result set forth as follows by the court (R. 84):

> It is clear, therefore, that if the Commission has authority to do what it did in the instant case, it has authority to find *on the same facts* at least three entirely different costs of production for the foreign article, and, instead of recommending to the President a rate of duty based upon findings of fact, could recommend a rate of duty in accordance with its own economic theories.

3) Petitioner's third specification of error refers to a holding which is incidental to that complained of in the second specification. Both points are answered by reference to the statute, which clearly shows that Congress intended that the Commission should ascertain foreign and domestic costs of production for the same representative period, and compare these costs to determine whether the existing duties were adequate. Obviously, for purposes of the statute, these costs must necessarily be found in United States currency. Furthermore, if conversion of foreign currency may be made at a rate of exchange other than that existing during the period selected as representative, the converted values cease to be the values for that period.

4) Errors 4 and 5 referred to by petitioner (pp. 6-7) are that the court erred in holding the investigation and proclamation illegal, and in holding that conversion of

currency is involved in finding basic cost of production. As these two points are taken up elsewhere, they will not be separately discussed here.

REASONS FOR DENIAL OF WRIT

Petitioner states under "Reason for granting the writ" (p. 7):

> The question decided by the Court of Customs and Patent Appeals is one of first impression. Although there is, therefore, no conflict of decisions, the decision below, if allowed to stand, will in large measure destroy the usefulness of the flexible-tariff provisions of the tariff act of 1930 by prohibiting prompt and effective changes in tariff duties to offset changing trade conditions caused by foreign-currency fluctuations. The question cannot well arise in courts other than the Customs Courts. *Consequently there is involved a question of federal law of large public importance which has not been, but should be, settled by this court.*

In other words (a) under the decision in question the purposes of the flexible-tariff law would be largely defeated, because it would no longer be possible for the Tariff Commission to act promptly and effectively "to offset changing trade conditions caused by foreign-currency fluctuations," and (b) there is therefore "involved a question of federal law of large importance."

We respectfully dissent. The statement quoted is one of unwarranted apprehension rather than of factual certainty. The Commission can act just as promptly and effectively when it finds cost of production for the representative period in American dollars as when it finds it in foreign currency. The power of the Commission to act

in the light of these "changing trade conditions" will in no way be impaired by the principle of the decision in question. Therefore, that decision cannot "in large measure destroy the usefulness of the flexible-tariff provisions of the tariff law."

Further in regard to the asserted "question of law of large importance," a case may be important because it involves a large sum of money. That does not apply here, because only a single commodity (clams) from a single country is in question. Also, a case may be important because it turns on a legal principle of wide applicability. In this instance this applicability is alleged to be to "changing trade conditions caused by foreign-currency fluctuations." Foreign-currency fluctuation has existed throughout the world since the tariff act of 1930 was enacted and yet petitioner does not even assert that the present decision would in any manner impair the validity of proclamations covering the many other commodities which the Commission has investigated. The statement that the case "is one of *first* impression" implies that this is the first time the question has arisen. So, we emphatically deny that the matter is of large importance, either in its immediate results or in its possible effect upon future activities of the Commission.

Further in respect to the "question of Federal law," two main points were involved.

1) Could the acts of the Commission be reviewed to determine whether they had conducted an investigation as provided for by section 336, and (2) is compliance by the Commission with the terms of section 336 a condition precedent to issuance of a valid proclamation?

In regard to these questions it should be noted that the President may not proclaim any change in rate of duty except that "specified in any report of the Commission

under this section" (336-c), and that the Commission is required to report to the President "the results of its investigation and its findings in respect to such differences in costs of production," and to "specify in its report such increases or decreases in rates of duty expressly fixed by statute . . . as it *finds shown by the investigation* to be necessary to equalize such differences" (sec. 336-a). Clearly, then, Congress required a determination *by the Commission* of the differences in the cost of producing the foreign and domestic article *during the representative period*. Consequently, such a determination is prerequisite to a valid proclamation. If this is not true, then Congress did not "lay down by legislative act an intelligible principle to which the person or body is directed to conform," such as was referred to in *Hampton v. United States*, 276 US 394; 409, involving the so-called "flexible tariff" provision of the tariff act of 1922.

Therefore, the two questions set forth above were properly passed on by the court, and there is not here "involved a question of federal law . . . which has not been, but should be, settled by this court." Similar questions, as applies to varied circumstances have been settled by this court in many cases, including the following:

a) *Robertson v. Frank*, 132 US 17, 24; *Muser v. Magone*, 155 US 240, 247; *United States v. Passavant*, 169 US 16, 21, holding that, although appraisement of imported merchandise was generally conclusive, yet, if the appraiser proceeded upon a wrong principle, contrary to law, his appraisement was subject to impeachment.

b) *United States v. Baltimore & Ohio*, 293 US 454, 462, holding an order of the Interstate Commerce Commission to be void because of absence of any basic or essential finding required to support the Commission's order.

c) *Baltimore & Ohio v. United States,* 264 US 258, 264, holding that an order of the Interstate Commerce Commission made without evidence to support it was void.

d) *Waite v. Macy,* 246 US 606, involving an action to enjoin the Tea Board from applying certain tests to imported tea wherein it was said (p. 608-9):

> No doubt it is true that this court cannot displace the judgment of the board in any matter within its jurisdiction, but it is equally true that the board cannot enlarge the powers given to it by statute and cover a usurpation by calling it a decision on purity, quality, or fitness for consumption. Morrill v. Jones, 106 US 466; United States v. United Verde Copper Co., 196 US 207, 215, United States v. George, 228 US 14, 21.

e) *St. Joseph Stockyards Co. v. United States,* 298 US 38, 51, holding that the court may ascertain whether there is any evidence to support a finding by a commission acting within the sphere of legislative authority.

Jurisdiction to grant certiorari here is derived from section 195 of the Judicial Code as amended (28 USC 308). This section is substantially the same as that authorizing certiorari to circuit courts of appeals prior to 1925. Judicial Code, section 240. Therefore, the statement in *Magnum Import Co. v. De Spoturno Coty,* 262 US 159, 163, that jurisdiction to grant certiorari was not conferred upon this court "merely to give the defeated party in the circuit court of appeals another hearing" is applicable. Also, as stated in *Hamilton-Brown Shoe Co. v. Wolf,* 240 US 251, 258, in reference to certiorari:

> As has been many times declared, this is a jurisdiction to be exercised sparingly, and only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision.

Petitioner cites *Norwegian Nitrogen Co. v. United States*, 288 US 294, 305, as authority for its contention (p. 9) that "there can be no judicial review of the legislative judgment reached by the Commission and the President, and *a fortiori* no review of the facts and reasoning on which that judgment was based." As has been shown above the court below did not pretend to review such facts, but only determined whether, in the words of the cited case, "the prescribed forms of legislation have been regularly observed." The applicable principle of that case to the present law is that although the action of the Tariff Commission, in exercising its delegated power of ascertaining a rate of duty necessary to equalize differences in cost of production, is not subject to impeachment, yet this is true only if the prescribed forms of legislation have been regularly observed. Here the Commission did not ascertain a rate of duty necessary to equalize differences in costs of production existing during the representative period. Therefore the "prescribed form" was not regularly observed.

As part of the argument justifying the Commission's actions petitioner asserts (p. 10) that:

> The need for a change in the duty on canned clams arose primarily from the fact that Japan went off the gold standard on December 13, 1931.

However, it should be noted that the investigation also related to razor clams, as to which "Canada is the principal competing country" (R. 22). Furthermore, although many articles were being imported from Japan at this time, and hence there would "primarily" have been a similar need for change in duty, yet so far as appears from the petition no such changes were made.

In support of the petition it is argued (p. 11) that:

> Depreciation of the currency of a country in terms of foreign exchange has, at least over limited periods

of time, a relatively small influence upon the domestic value of that currency and upon the domestic cost of production, expressed in terms of that currency. See e. g. Edie, *Dollars*, pp. 94-5.

Assuming that this is so, yet it remains true that use of an average rate of exchange to convert such costs into United States currency does not result in a "weighted average" of prices or values such as the Commission is directed by section 336 (e). (2) to ascertain. This is illustrated by reference to a supposed importation of 50,000 cases of merchandise over a 5-month period, at unit prices of 10 yen per case, and with an exchange rate ranging from 40 cents to 20 cents, with an *average* of 30 cents. Under such facts conversion at the *average* rate would give a total dollar value of $150,000 or $3 per case. However if the monthly quantity of importations varied during this period, use of the actual rates of exchange would produce a unit value of $3.25, as follows:

	Cases	Invoice unit price	Total invoice value	Exchange rate	Dollar value
1st month	20,000	10 yen	200,000	.40	80,000
2nd month	10,000	10 yen	100,000	.35	35,000
3rd month	5,000	10 yen	50,000	.30	15,000
4th month	5,000	10 yen	50,000	.25	12,500
5th month	10,000	10 yen	100,000	.20	20,000
					162,500

Average value per case, $3.25.

At page 10 petitioner cites the Congressional record and House and Senate reports relating to the tariff act of 1922 as showing the purpose of the flexible-tariff provision. 62 Cong. Rec. 37 contains an address to Congress by the President on December 6, 1921, requesting an extension of the powers of the Tariff Commission, "so that it can adapt itself to scientific and wholly just adminis-

tration of the law." 62 Cong. Rec., part 12, p. 12508, is a report by Mr. Fordney on the then pending tariff act, arguing for adoption of a change in the basis of assessment of duty from "foreign valuation to the American-wholesale selling price of the imported goods." House report 248 likewise endorses the American valuation basis of assessment and Senate report 595 pertains to the same subject.

So, these proceedings in Congress all related to the tariff act of 1922, and consequently are not of importance in the present case, particularly because the provision in section 336 permitting the Commission to accept, as evidence of foreign cost of production, the weighted average of the invoice price or values for a representative period, was newly enacted in 1930.

There is, however, in 62 Cong. Rec., part 2, page 11160, a statement which is of interest in respect to one point raised by the petitioner. Senator McCumber, chairman of the Senate Finance Committee, in discussing the flexible-tariff provision, 42 Stat. 941, section 315 of the tariff act of 1922, and in answering a specific question as to whether the President's action thereunder was subject to review, said:

> We can not keep out of court the question as to whether or not the President has violated the law. That can be brought before the court in a proper proceeding.

In supporting the constitutionality of that section, Senator McCumber also said (p. 11177):

> That situation develops a question of law. While the contrary view has been asserted, the opinion is hazarded that such failure of the President to follow *or his misinterpretation of a law entering into his conclusion* would, in a proper case made, be subject to judicial cognizance. If that is true no express au-

thority therefor need be written in the amendment, *but the question could and would be raised on protest as now provided before the Board of United States General Appraisers* (now Customs Court).

The function of finding costs of production and ascertainment of a rate of duty necessary to equalize any differences is now performed by the Tariff Commission rather than by the President. Consequently, their misinterpretation of the law entering into their conclusions should likewise be subject to judicial cognizance by the Customs Court.

CONCLUSION

For reasons stated above it is respectfully submitted that the petition for certiorari should be denied.

San Francisco, January 22, 1940.

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(APPENDIX FOLLOWS)

APPENDIX

Sec. 336. Equalization of Costs of Production.

(a) Change of Classification or Duties.—In order to put into force and effect the policy of Congress by this Act intended, the commission (1) upon request of the President, or (2) upon resolution of either or both Houses of Congress, or (3) upon its own motion, or (4) when in the judgment of the commission there is good and sufficient reason therefor, upon application of any interested party, shall investigate the differences in the costs of production of any domestic article and of any like or similar foreign article. In the course of the investigation the commission shall hold hearings and give reasonable public notice thereof, and shall afford reasonable opportunity for parties interested to be present to produce evidence, and to be heard at such hearings. The commission is authorized to adopt such reasonable procedure and rules and regulations as it deems necessary to execute its functions under this section. The commission shall report to the President the results of the investigation and its findings with respect to such differences in costs of production. If the commission finds it shown by the investigation that the duties expressly fixed by statute do not equalize the differences in the costs of production of the domestic article and the like or similar foreign article when produced in the principal competing country, the commission shall specify in its report such increases or decreases in rates of duty expressly fixed by statute (including any necessary change in classification) as it finds shown by the investigation to be necessary to equalize such differences. In no case shall the total increase or decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by statute.

(b) Change to American Selling Price.—If the commission finds upon any such investigation that such differences can not be equalized by proceeding as hereinbefore provided, it shall so state in its report to the President and shall specify therein such ad valorem rates of duty based upon the American selling price (as defined in section 402 (g)) of the domestic article, as it finds shown by the investigation to be necessary to equalize such differences. In no case shall the total decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by statute, and no such rate shall be increased.

(c) Proclamation by the President.—The President shall by proclamation approve the rates of duty and changes in classification and in basis of value specified in any report of the commission under this section, if in his judgment such rates of duty and changes are shown by such investigation of the commission to be necessary to equalize such differences in costs of production.

(d) Effective Date of Rates and Changes.—Commencing thirty days after the date of any presidential proclamation of approval the increased or decreased rates of duty and changes in classification or in basis of value specified in the report of the commission shall take effect.

(e) Ascertainment of Differences in Costs of Production.—In ascertaining under this section the differences in costs of production, the commission shall take into consideration, in so far as it finds it practicable:

(1) In the Case of a Domestic Article. (A) The cost of production as hereinafter in this section defined; (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; and (C) other relevant factors that constitute an advantage or disadvantage in competition.

(2) In the Case of a Foreign Article. (A) The cost of production as hereinafter in this section defined, or, if the commission finds that such cost is not readily ascertainable, the commission may accept as evidence thereof, or as supplemental thereto, the weighted average of the invoice prices or values for a representative period and/or the average wholesale selling price for a representative period (which price shall be that at which the article is freely offered for sale to all purchasers in the principal market or markets of the principal competing country or countries in the ordinary course of trade and in the usual wholesale quantities in such market or markets); (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; (C) other relevant factors that constitute an advantage or disadvantage in competition, including advantages granted to the foreign producers by a government, person, partnership, corporation, or association in a foreign country.

(f) Modification of Changes in Duty.—Any increased or decreased rate of duty or change in classification or in basis of value which has taken effect as above provided may be modified or terminated in the same manner and subject to the same conditions and limitations (including time of taking effect) as is provided in this section in the case of original increases, decreases, or changes.

(g) Prohibition Against Transfers from the Free List to the Dutiable List or from the Dutiable List to the Free List.—Nothing in this section shall be construed to authorize a transfer of an article from the dutiable list to the free list or from the free list to the dutiable list, nor a change in form of duty. Whenever it is provided in any paragraph of Title I of this Act, or in any amendatory Act, that the duty or duties shall not exceed a specified

ad valorem rate upon the articles provided for in such paragraph, no rate determined under the provisions of this section upon such article shall exceed the maximum ad valorem rate so specified.

(h) Definitions.—For the purpose of this section:

(1) The term "domestic article" means an article wholly or in part the growth or product of the United States; and the term "foreign article" means an article wholly or in part the growth or product of a foreign country.

(2) The term "United States" includes the several States and Territories and the District of Columbia.

(3) The term "foreign country" means any empire, country, dominion, colony, or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions).

(4) The term "cost of production," when applied with respect to either a domestic article or a foreign article, includes, for a period which is representative of conditions in production of the article: (A) The price or cost of materials, labor costs, and other direct charges incurred in the production of the article and in the processes or methods employed in its production; (B) the usual general expenses, including charges for depreciation or depletion which are representative of the equipment and property employed in the production of the article and charges for rent or interest which are representative of the cost of obtaining capital or instruments of production; and (C) the cost of containers and coverings of whatever nature, and other costs, charges, and expenses incident to placing the article in condition packed ready for delivery.

(i) Rules and Regulations of President.—The President is authorized to make all needful rules and regulations for carrying out his functions under the provisions of this section.

(j) Rules and Regulations of Secretary of Treasury.—The Secretary of the Treasury is authorized to make such rules and regulations as he may deem necessary for the entry and declaration of foreign articles of the class or kind of articles with respect to which a change in basis of value has been made under the provisions of subdivision (b) of this section, and for the form of invoice required at time of entry.

(k) Investigations Prior to Enactment of Act.—All uncompleted investigations instituted prior to the approval of this Act under the provisions of section 315 of the Tariff Act of 1922, including investigations in which the President has not proclaimed changes in classification or in basis of value or increases or decreases in rates of duty, shall be dismissed without prejudice; but the information and evidence secured by the commission in any such investigation may be given due consideration in any investigation instituted under the provisions of this section.

Sec. 402. Value.

(d) Export Value.—The export value of imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

(g) AMERICAN SELLING PRICE.—The American selling price of any article manufactured or produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for delivery, at which such article is freely offered for sale to all purchasers in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities in such market, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such merchandise when sold in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article.

Sec. 522. Conversion of Currency.

(b) Proclaimed Value Basis of Conversion.—For the purpose of the assessment and collection of duties upon merchandise imported into the United States on or after the day of enactment of this act, wherever it is necessary to convert foreign currency into currency of the United States, such conversion, except as provided in subdivision (c), shall be made at the values proclaimed by the Secretary of the Treasury under the provisions of section 25 of such Act of August 27, 1894, as amended, for the quarter in which the merchandise was exported.